



February 17, 1999

Ms. JoAnn S. Wright
Walsh, Anderson, Brown, Schulze, & Aldridge, P.C.
P.O. Box 168046
Irving, Texas 75016-8046

OR99-0497

Dear Ms. Wright:

As counsel for the Bland Independent School District (the "school district"), you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 122118.

The school district received a request for three categories of information concerning two specified lawsuits. Specifically, the first category of the request asks for "[a] complete itemization of each and every legal service that has been rendered, and the fee charged." In response to the request, you submit to this office for review the records at issue. You state that the school district is making available to the requestor all of the information responsive to the remaining two categories of the request. You contend, however, that the information responsive to the first category of the request may be excepted from required public disclosure by sections 552.101, 552.103, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we address your claim that section 552.101 excepts some of the information from disclosure pursuant to the attorney-client privilege. Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." As you are aware, the attorney-client privilege is properly claimed under section 552.107. Open Records Decision No. 574 at 2 (1990). Therefore, our analysis of the applicability of the attorney-client privilege will be discussed below, when we consider your section 552.107 claim.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the governing body is or may be a party. The governing body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governing body must meet both prongs of this test for information to be excepted under section 552.103(a).

You inform this office that litigation is pending in two related lawsuits. You state “[t]he billing statements contain descriptions of legal services provided in defending and prosecuting” the cited cases.” You further assert that “[t]o disclose this information would reveal trial strategy and the work undertaken by the attorney in representing the client . . . [because] The very details of the legal services provided are integral to the litigation. ” Upon review of the submitted information, we conclude you have met your burden in establishing the relatedness of the descriptions of legal services rendered to the pending litigation. The city may therefore withhold this information from disclosure under section 552.103(a). You have not, however, shown how the amounts charged for services or the time spent performing services is related to the pending litigation and therefore, this information may not be withheld under the litigation exception. We have marked a representative sample of the type of information that may be withheld from disclosure pursuant to section 552.103(a).¹

We will next address whether the other exception you raise applies to the amounts charged for services or the time spent performing services. Section 552.107 excepts information from disclosure if:

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Gov’t Code § 552.107. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only “privileged information,” that is, information that reflects either confidential communications from the client to the attorney or the attorney’s legal advice or opinions; it does not apply to all client information held by a governmental body’s attorney. *Id.* at 5. Section 552.107(1) does not protect purely factual information. *Id.* Consequently, a governmental body may not withhold fee bills in their entirety under this exception, but may only withhold information about the details of the substance of communications between the attorney and the client. Consequently, if a governmental body seeks to withhold attorney fee bills under section 552.107(1), the governmental body must *identify* the portions of the bills that reveal client confidences or attorney advice. *See* Open Records Decision No. 589 (1991). In general, documentation of calls made, meetings attended, or memos sent is not protected under this exception. *See id.* We conclude you have not demonstrated how the information in the submitted fee bills

¹We note that if the opposing parties in the litigation have seen or had access to any of the information at issue, there would be no justification for withholding that information pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

relating to the time spent performing services and the expenses incurred is privileged information. Therefore, you may not withhold this information under section 552.107(1).²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with a large loop at the beginning.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID#122118

Enclosures: Marked documents

cc: Janice & Howard Shipwash
Route 1, Box 197G
Farmersville, Texas 75442
(w/o enclosures)

²We note that a small portion of the submitted records have been "whited out," we advise you that the records you submit to this office must be unredacted in order for our office to rule on the information. See Gov't Code § 552.301. Despite the "white out," we were able to read the information in making our decision.